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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
1997 Annual Access Tariff Filings

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CC Docket No. 97-149

REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY,
PACIFIC BELL, AND NEVADA BELL

Southwestern Bell Telephone Company (SWBT), Pacific Bell, and Nevada Bell (collectively, the SBC Companies), hereby respond to the Opposition filed by MCI Telecommunications Corporation (MCI) on August 12, 1997. MCI opposed the application for review filed by the SBC Companies on July 28, 1997.

MCI's Opposition provides no basis to deny the SBC Application for Review, and ignores important facts that should be considered by the Commission. As demonstrated in the SBC Companies' Application for Review, the only remedy for the Common Carrier Bureau's (Bureau's) actions is to allow the SBC Companies' tariffs to take effect immediately as filed.

MCI claims that the Application for Review should be denied because the SBC Companies have shown no due process injury. Under MCI's analysis, MCI claims that "there must be a significant property right which is deprived by state actions" and that "the revocation of the right must cause some irreparable injury." Contrary to MCI, the SBC Companies have satisfied this burden.

MCI ignores the fact that in a case where a tariff is suspended, an accounting order imposed, and an investigation begun, significant costs incur to the filing carrier.¹ At a minimum, the

¹ MCI may not understand this process fully since the Commission treats MCI's tariff filings as "non-dominant," therefore, there is no relevant opportunity for affected parties to comment on them before they go into effect on one-day's notice. Indeed, a recent order of the Commission prohibited carriers like MCI from filing tariffs with the Commission. MCI

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SBC Companies must incur \$600.00 in filing fees when a tariff is suspended. Fair opportunity to file the SBC Companies' arguments would have allowed the Commission to decide to have the SBC Companies' tariffs take effect immediately, thus preventing the tariff refilings.

Further, and more importantly, the SBC Companies were deprived of the automatic "deemed lawful" status attached to their filings as required under the streamlining provisions of the Telecommunications Act of 1996.² These rules established a specific expectation and legal right for the filing carriers. Contrary to MCI's claim, the abrogation of this right in the 1997 annual access filing process did cause a deprivation of a significant property right.

MCI claims that the SBC Companies' due process rights are protected since no final decision has been made and the SBC Companies will have adequate opportunity to participate in the subsequent investigation. MCI's position is apparently that the status that would be afforded to the transmittal at the end of an investigation where findings are made in the filing carriers' favor, is equal to the "deemed lawful" status that would be attributed to a streamlined tariff filing that takes effect without suspension under the Commission's rules.

This point is not at all clear from the brief opportunity that the Commission has had to investigate streamlined tariff filings since the implementation of the Commission's new rules in CC Docket No. 96-187. If MCI's proposal is true, the SBC Companies concede that the extent of the injury is the requirement of the SBC Companies to make new tariff filings and to participate in the

has sought, and received, a judicial stay of this order. MCI Telecommunications Corp. v. FCC, No. 96-1959 (D.C. Cir., February 13, 1997).

² Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996, CC Docket No. 96-187, Report and Order, (FCC 97-23) (rel. January 31, 1997). In this Order, the Commission concluded that tariff filings effective on 15-days' notice would require that petitions against such filings be made within seven calendar days, and replies to be filed within four days of service of the Petition.

investigative process. Nevertheless, the cost of such refileing and participation should not be discounted as nonexistent.

MCI also wrongly asserts that SBC received a full opportunity to be heard. MCI claims that "SBC had three business days to draft and file its reply comments . . ."³ In fact, MCI served its petition on the SBC Companies on June 24, 1997, one day late. Three business days from June 24 would equate to June 27, 1997. Clearly, SBC did not have the luxury of filing on June 27, 1997, but instead had to file on June 26, 1997, pursuant to the Order Modifying Deadline released by the Commission on June 25, 1997. Thus, MCI's claim that the SBC Companies had three business days is blatantly wrong.

MCI further claims that SWBT previously contended that two days would be sufficient for LECs to draft replies to petitions to suspend and investigate.⁴ The SBC Companies agree that two days might be sufficient for LECs to draft replies to petitions to suspend and investigate (if it is known in advance that two days is all that will be granted), but only where petitioners are placed under similar time constraints. It makes no sense to reduce the time period for filing of replies if petitioners are given substantially more time with which to file the arguments in their petitions. The SBC Companies' suggestion of two days was contingent and made only in the context of petitions that would be similarly constrained. MCI's claim, therefore, is totally taken out of context.

Instead, in the current proceeding, the Commission effectively allowed the petitioners eight days to file petitions against the SBC Companies' tariffs (due to allowing AT&T and MCI to file out-of-time) and only two business days for the SBC Companies to respond. The effect of the

³ MCI at p. 4.

⁴ MCI at p. 4.

reduction to two days is even more grossly prejudicial to the SBC Companies in this case, since the reduction to two business days came in the middle of the reply filing period. There is a great deal of difference between allowing only two days for a reply to be filed, when the two-day deadline is known to all parties in sufficient time before the deadline to allow resources to be properly allocated, and the instant situation where four days was granted and relied upon, and two days were actually allowed.

MCI claims that the SBC Companies have been given the opportunity to be heard, since the SBC Companies have had the ability to restate their arguments that they would have filed in their replies, in their application for review. It is unclear, however, what remedy this provides the SBC Companies, since as previously stated, SBC is now required to make those arguments in the investigation of the 1997 annual access tariff filings.

Nevertheless, MCI's claim minimizes the costs and resources needed to refile the tariffs and to participate in the investigation process. The Commission recently determined that "detariffing reduces transaction costs for service providers and reduces the administrative burden on service providers and the Commission."⁵ The Commission noted that this reduction of administrative burden was not insignificant and supported a finding that detariffing is consistent with the public interest. Thus, it cannot now be disputed that the tariff filing and investigation procedure presents a substantial burden, and causes filing carriers to incur not inconsequential costs.

Finally, MCI claims that the Order Modifying Deadline represented a reasonable exercise of the Bureau's authority. (MCI at p. 5.) MCI argues that the reduction in the reply filing period was necessary to allow a one-day suspension of the tariffs and refiling for a July 1 effective

⁵ Hyperion Telecommunications Petition Requesting Forbearance CCB/CPD No. 96-3, et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking (FCC 97-219) (rel. June 19, 1997) at para. 27.

date. Assuming, arguendo, that this need presented a sufficient basis for a change to the schedule, this reason does not justify issuance of the Order Modifying Deadline in the middle of the reply schedule. The filing dates were set by the Commission itself two months before the petitions were filed and no intervening events occurred that would have justified reconsideration of this schedule (and none were cited by the Bureau in its Order Modifying Deadline). Thus, it was unreasonable for the Bureau to arbitrarily modify the deadline at such a late date.

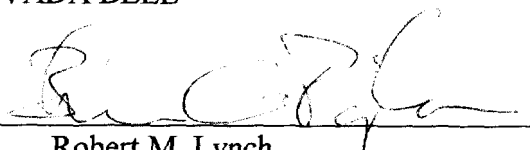
CONCLUSION

For the foregoing reasons, the SBC Companies respectfully request that the Commission immediately vacate the Memorandum Opinion and Order as to the SBC Companies and allow the SBC Companies tariffs to take effect as originally filed with a "deemed lawful" status.

Respectfully submitted,

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August 27, 1997

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "REPLY COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY" in Docket No. 97-149 has been filed this 27th day of August, 1997 to the Parties of Record.

A handwritten signature in black ink, reading "Katie M. Turner". The signature is written in a cursive style with a horizontal line underneath the name.

Katie M. Turner

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